

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7755

Petition of Vermont Air National Guard)
("VTANG") for a certificate of public good,)
pursuant to 30 V.S.A. § 248(j), authorizing the)
construction and operation of a 2.10 MW solar)
electric generation facility at the VTANG Base,)
located at the Burlington International Airport,)
South Burlington, Vermont)

Order entered: 9/29/2011

I. INTRODUCTION

This case involves a petition filed by Vermont Air National Guard ("VTANG") requesting a certificate of public good ("CPG") pursuant to 30 V.S.A. § 248(j) to authorize VTANG to construction and operate a 2.1 MW solar electric generation facility at the VTANG Base, located at the Burlington International Airport in South Burlington, Vermont (the "proposed project"). In today's Order, we conclude that the proposed project will be of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized by 30 V.S.A. § 248(j); and the proposed project will promote the general good of the state.

II. PROCEDURAL HISTORY

On July 29, 2011, VTANG filed a petition with the Public Service Board ("Board") requesting a CPG pursuant to 30 V.S.A. § 248(j) to install the proposed 2.1 MW solar electric generation facility at the VTANG Base, located at the Burlington International Airport in South Burlington, Vermont. VTANG submitted prefiled testimony, proposed findings, and a proposed order pursuant to the requirements of 30 V.S.A. § 248(j).

Notice of the petition was sent on August 19, 2011, to all entities specified in 30 V.S.A. § 248(a)(4)(c) and other interested parties. The notice stated that any party wishing to submit comments as to whether the petition raises a significant issue with respect to the substantive criteria of 30 V.S.A. § 248 needed to file comments with the Board on or before September 16, 2011. A similar notice of the filing was posted on the Board's website.

On August 19, 2011, the Clerk of the Board issued a memorandum requiring VTANG to file additional information related to 30 V.S.A. §§ 248(b)(1) and (3).

On September 8, 15, 16, and 20, 2011, VTANG filed additional information.

On September 15, 2011, the Vermont Division for Historic Preservation ("DHP") filed comments regarding the petition.

On September 16, 2011, the Department of Public Service filed comments with the Board.

On September 21, 2011, the Clerk of the Board issued a memorandum requesting additional information related to DHP's comments.

On September 26, 2011, VTANG, DHP, and Green Mountain Power Corporation ("GMP") filed a joint response to the September 21 memorandum.

III. FINDINGS

1. VTANG is a duly organized National Guard as defined in 32 U.S.C. § 101(3), located at the Burlington International Airport at 105 NCO Drive in South Burlington, Vermont. Petition at 1.

2. VTANG is a military department of the State of Vermont, established under 3 V.S.A. § 212 and 20 V.S.A. § 361(a). Petition at 1.

3. VTANG proposes to construct a 2.1 MW solar array at the VTANG Base. The proposed project will include installation and construction of:

- (1) Six post-mounted tilt-axis arrays of twenty panels each, with total capacity of 25.2 kW DC;
- (2) Three hundred thirty rack-mounted fixed arrays of twenty six panels each, with total capacity of 2102.1 kW DC; and

- (3) A forty-two-foot by twenty-foot electrical power shed to house inverters and data-collection equipment.

Rice pf. at 2-4; Browning pf. at 2.

4. The system will have five total inverters: three 500 kW, one 250 kW; and one 135 kW. The output of the inverters will be wired to a new 4000A 480Y/277VAC switchgear. The switchgear will feed a new 2000 kVA pad-mounted transformer that will step up the voltage to 12.47 kV. A new medium-voltage underground feeder will connect the transformer to a new riser pole on National Guard Road, where the system will be metered and interconnected to GMP's existing 12.46 kV 19G3 feeder. Browning pf. at 2-3.

5. The proposed project is for the generation of electricity to be consumed primarily by VTANG, will be installed on property of VTANG located in Vermont, will operate in parallel with facilities of the electric distribution system, is intended to primarily offset part or all of VTANG's own electricity requirements, and employs a renewable energy source as defined in 30 V.S.A. § 8002(2). Petition at 1.

6. The proposed project will occupy an area measuring approximately 750 by 750 feet. Rice pf. at 2.

7. Construction of the proposed project will be on previously developed land on VTANG property, and will require groundwork and tree and stump removal. Wright pf. at 5.

Discussion

Pursuant to 30 V.S.A. § 219a(m):

A facility for the generation of electricity to be consumed primarily by the military department established under 3 V.S.A. § 212 and 20 V.S.A. § 361(a) or the National Guard as defined in 32 U.S.C. § 101(3), and installed on property of the military department or National Guard located in Vermont, shall be considered a net metering system for purposes of this section if it has a capacity of 2.2 MW (AC) or less and meets the provisions of subdivisions (a)(3)(B) through (E) of this section. Such a facility shall not be subject to and shall not count toward the capacity limits of subdivisions (a)(3)(A) (no more than 250 kW) and (h)(1)(A) (two percent of peak demand) of this section.

Because the proposed VTANG solar facility meets each of the § 219a(m) criteria, the proposed project is considered a net metering system.

The Legislature, pursuant to 30 V.S.A. §§ 219a(a) and 8007(b), has enabled the Board to conditionally waive the requirements of 30 V.S.A. § 248(b) for certain renewable energy facilities, including those that are net metered and those that are between 150 kW and 2.2 MW in capacity. The Board has therefore developed standards and procedures for the simplified petition and review of these types of projects.¹ With respect to the VTANG project, the following criteria have been conditionally waived in accordance with the standards and procedures developed by the Board:

- 30 V.S.A. § 248(b)(2) - Need for present and future demand for services;
- 30 V.S.A. § 248(b)(4) - Economic benefit to the State;
- 10 V.S.A. § 6086(a)(7) - Municipal or governmental services;
- 10 V.S.A. § 6086(a)(9)(K) - Development affecting public investments;
- 10 V.S.A. § 6086(a)(1)C - Water conservation;
- 10 V.S.A. § 6086(a)(2) - Sufficiency of water;
- 10 V.S.A. § 6086(a)(3) - Existing water supply;
- 10 V.S.A. § 6086(a)(6) - Educational services;
- 30 V.S.A. § 248(b)(6) - Least-cost integrated resource plan; and
- 30 V.S.A. § 248(b)(7) - Compliance with electric energy plan.

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

8. The proposed project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipalities. This finding is supported by findings 9 through 11, below.

1. See Board Rule 5.107, and *In re: Simplified Procedures for Renewable Energy Plants with a Capacity Between 150 kW and 2.2 MW*, Order of 8/31/10.

9. The Chittenden County Regional Planning Commission ("CCRPC") received notice of the proposed project on September 6, 2011. The CCRPC did not comment on the proposed project. Exh. 12.

10. The City of South Burlington Planning and Zoning Department and City Council ("South Burlington") were provided with copies of the petition and project plans. South Burlington did not comment or provide recommendations. Wright supplemental pf. 9/20/11 at 1.

11. The proposed project is consistent with the land conservation measures of the South Burlington City Comprehensive Plan. Wright supplemental pf. 9/20/11 at 2.

Need for Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

Pursuant to 30 V.S.A. § 8007(b), this criterion has been conditionally waived.

System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

12. The proposed project will not adversely affect system stability and reliability. This finding is supported by finding 13, below.

13. A System Impact Study ("SIS") was performed for the proposed project by Green Mountain Power Corporation ("GMP") and completed on May 11, 2011. The SIS concludes that:

- (1) GMP needs to complete a coordination study on the GMP distribution system and the proposed generating system to allow proper setting of the generator relays and the distribution circuit reclosers and fusing.
- (2) The existing 65K fuses at the River Cove Road tap must be removed to coordinate with the new recloser at the proposed project.
- (3) The regulator settings of the Essex substation must be revised to include co-generation mode.
- (4) A 2000 kVA, 12,470 volt wye/480 wye transfer must be installed at the generator step-up transformer.
- (5) A recloser and disconnect switches must be installed on the 12.47 kV primary feeder that feeds the 2000 kVA project transformer.
- (6) The proposed project must be inspected by a State Electrical Inspector to assure compliance with the National Electrical Code.

- (7) Testing required by IEEE 1547 Section 5 must be completed, with a written copy provided to GMP.

With the changes required by the SIS, the proposed project will not adversely affect system stability or reliability. Browning pf. at 3-4.

Discussion

We condition the CPG on VTANG implementing all recommendations of the SIS.

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

Pursuant to 30 V.S.A. § 8007(b), this criterion has been conditionally waived.

Aesthetics, Historic Sites, Air and Water Purity, the Natural Environment and Public Health and Safety

[30 V.S.A. § 248(b)(5)]

14. The proposed project will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and public health and safety. This finding is supported by findings 15 through 38, below.

Outstanding Resource Waters

[10 V.S.A. § 1424a(d)]

15. The proposed project is not located on or near any Outstanding Resource Waters as identified by the Vermont Water Resources Panel. Wright pf. at 13.

Water and Air Pollution

[10 V.S.A. § 6086(a)(1)]

16. The proposed project will not result in undue water or air pollution. This finding is supported by findings 17 through 26, below.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

17. The proposed project is not located in a headwaters area of the State. Wright pf. at 5.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

18. The proposed project will not result in the injection of any harmful or hazardous substances into groundwater or wells. Any chemicals used during construction will be properly managed and all waste properly disposed. Operation of the proposed project will not typically generate hazardous waste. The VTANG hazardous waste management plan will be followed in the event of spills and/or hazardous waste generation. Wright pf. at 5-6.

Water Conservation

[10 V.S.A. § 6086(a)(1)(C)]

Pursuant to 30 V.S.A. § 8007(b), this criterion has been conditionally waived.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

19. The proposed project is not located in a floodway. Wright pf. at 7.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

20. The proposed project will not impact any streams. There are no streams on or adjacent to the project site. Wright pf. at 7.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

21. The proposed project is not located on a shoreline. Wright pf. at 7.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

22. The proposed project will not involve any activities within any Class 1, 2 or 3 wetland or wetland buffer. The proposed project will be in compliance with the rules of the Water Resources Board relating to significant wetlands. Wright pf. at 7-8.

Air Pollution

[10 V.S.A. § 6086(a)(1)]

23. The installation and operation of the proposed project will not unduly impact air quality. Construction of the proposed project will cause temporary air emissions from the operation of heavy equipment. An Air Pollution Control Permit from the Agency of Natural Resources is not required for this project. Operation of the proposed project is expected to result in a net positive effect on air quality due to reduced greenhouse gas emissions from fossil-fuel-powered generation facilities currently providing power to the regional grid. Wright pf. at 5.

Sufficiency of Water and Burden on Existing Water Supply

[10 V.S.A. §§ 6086(a)(2)&(3)]

Pursuant to 30 V.S.A. § 8007(b), these criteria have been conditionally waived.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

24. The proposed project will not cause soil erosion. This finding is supported by findings 25 and 26, below.

25. Federal facilities in Vermont are required to obtain the Federal EPA Construction General Permit instead of the equivalent State of Vermont Permit. An EPA Construction General Permit has been obtained for this project. In accordance with the EPA Construction General Permit, VTANG prepared a stormwater pollution prevention plan ("SWPP"). Pursuant to the SWPP, best management practices will be implemented during construction, including the installation and maintenance of silt fencing down gradient from all ground disturbance,

installation and maintenance of stabilized construction entrances, and stabilization of disturbed areas within 48 hours of final grading. The site will be inspected at least weekly to ensure that erosion is not occurring. Wright pf. at 6-8.

26. A State of Vermont Operation permit has been obtained to cover the stormwater management of the completed project. All stormwater from the proposed project will infiltrate to the subsurface and will not be discharged directly to any surface water body. Wright pf. at 6.

Transportation Systems

[10 V.S.A. § 6086(a)(5)]

27. The proposed project will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports or airways, and other means of transportation. This finding is supported by findings 28 and 29, below.

28. Road traffic on National Guard Avenue will not be significantly impacted during construction of the project. Construction vehicles will have two access points to the site, and can be staged on the VTANG base such that they will not be routinely stopped on National Guard Road. Operation and maintenance of the completed project will not impact road traffic. Wright pf. at 9.

29. Burlington International Airport and Federal Aviation Administration personnel have been consulted, and agree that the proposed project complies with applicable requirements and regulations. Wright pf. at 9.

Educational Services

[10 V.S.A. § 6086(a)(6)]

Pursuant to 30 V.S.A. § 8007(b), this criterion has been conditionally waived.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

Pursuant to Board Rule 5.107(B)(2), this criterion has been conditionally waived.

Aesthetics, Historic Sites
and Rare and Irreplaceable Natural Areas
[10 V.S.A. § 6086(a)(8)]

30. The proposed project will not have an undue adverse impact on the scenic or natural beauty, aesthetics, historic sites, or rare and irreplaceable natural areas. This finding is supported by findings 31 through 37, below.

31. The VTANG base, the Burlington International Airport, and much of the immediate surrounding area are developed commercial and industrial properties. Many of the VTANG buildings are of a modern design, and the solar array will fit within this context. The transformer pad and other electrical infrastructure will be similar to other such structures already present on the base. Wright pf. at 10-11.

32. Existing areas of trees will remain along the northern boundary of the project. Wright pf. at 10.

33. The proposed project will be visible from the air by aircraft pilots and passengers, and from parts of the Burlington International Airport terminal and parking garage. The proposed project will not be easily seen from National Guard Avenue. Wright pf. at 10.

34. The proposed project is lower in height than most of the buildings on the airfield. Wright pf. at 10.

35. The solar panels are a non-reflective type that will not cause excessive glare or reflections. Wright pf. at 10.

36. The proposed solar installation will not impact historic or cultural resource sites. A cultural resources survey was conducted on the VTANG base, with test pits excavated within the area of the project. No significant architectural or archaeological resources were found in the solar installation area. Wright pf. at 11.

37. There are no rare or irreplaceable natural areas in the project area. Wright pf. at 11.

Discussion

Aesthetics

In determining whether a proposed project would have an undue adverse impact on aesthetics, the Board has adopted the Environmental Board's Quechee test. The Board has previously summarized the Quechee analysis:

In order to reach a determination as to whether the project will have an undue adverse effect on the aesthetics of the area, the Board employs the two-part test first outlined by the Vermont Environmental Board in Quechee, and further defined in numerous other decisions.

Pursuant to this procedure, first a determination must be made as to whether a project will have an adverse impact on aesthetics and the scenic and natural beauty. In order to find that it will have an adverse impact, a project must be out of character with its surroundings. Specific factors used in making this evaluation include the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors and materials with the immediate environment, the visibility of the project, and the impact of the project on open space.

The next step in the two-part test, once a conclusion as to the adverse effect of the project has been reached, is to determine whether the adverse effect of the project is "undue." The adverse effect is considered undue when a positive finding is reached regarding any one of the following factors:

1. Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?
2. Have the applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings?
3. Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?²

In addition to the Quechee analysis, the Board's consideration of aesthetics under Section 248 is "significantly informed by overall societal benefits of the project."³

2. *Amended Petition of UPC Vermont Wind*, Docket 7156, Order of 8/8/07 at 64–65.

3. *In Re: Northern Loop Project*, Docket 6792, Order of 7/17/03 at 28.

The proposed project will not be out of character with its surroundings. The solar array will be located on a military base within the context of an active airport. This environment includes buildings of modern design and existing electrical infrastructure. The panels are non-reflective, thus they will not cause glare or reflections. While the project will be visible from the air, and from parts of the airport terminal and parking garage, the project will not be easily visible from outside of the base or airport. Therefore, the proposed project will not have an adverse impact on the aesthetics and the scenic and natural beauty of the area. Because of this determination of no adverse impact, it is not necessary to perform the second step of the two-part Quechee analysis.

Historic Sites

On September 15, 2011, the DHP filed comments on the proposed project. DHP states that DHP has no concern with the footprint of the project, and that the solar installation does not raise any significant issue with respect to historic sites. However, DHP is concerned with potential impacts to historic sites along National Guard Avenue and River Cove Road. DHP represents that these historic sites could be impacted by a GMP distribution line upgrade that may be related to the VTANG project. DHP requests that if the GMP distribution line upgrade is reasonably related to the VTANG project that DHP's concerns regarding these historic sites be considered.

In a September 16, 2011, e-mail to the Clerk of the Board, VTANG responded to the DHP comments. VTANG represents that GMP found that the distribution line upgrade did not require an Act 250 permit, that the distribution line upgrade would serve other GMP customers, that the distribution line upgrade was part of a long-term plan of upgrading the GMP substation in the area, and that the locations that are of concern to DHP are not located on VTANG land. VTANG states that concerns in the DHP letter do not have any connection to the proposed VTANG project.

In Docket No. 7201, the Board ruled on a petition by the Vermont Electric Cooperative, Inc. ("VEC") for a declaratory ruling that an upgrade to a distribution line required to interconnect a proposed electric generation facility is not subject to Section 248. In its decision,

the Board found that the distribution line upgrade did not require approval under Section 248.

Nonetheless, the Board directed that:

because the distribution upgrade would be built only because of the proposed Berkshire project, the Board has a responsibility under Section 248(b) to ensure that the proposed Berkshire project, including the necessary distribution upgrade, would not have any undue adverse impacts. Consequently, the Board must receive testimony from VEC describing the upgrade and addressing any criteria under Section 248(b) on which the upgrade has the potential for significant impact.⁴

In response to a September 21 Board staff memorandum requesting additional information regarding the GMP distribution line upgrade, VTANG, DHP and GMP filed an agreement on September 26, 2011, that addresses DHP's concerns.⁵ The agreement sets forth a mitigation plan that will result in no undue adverse impact on archaeological resources. The agreement states:

In order to mitigate the impacts associated with the pole placements, GMP, VTANG, and DHP propose that up to four 50 centimeter square test pits be excavated by a qualified archaeological consultant, in consultation with DHP, at each of the four pole locations. The work will result in an archaeological report in conformance with DHP's Guidelines for Conducting Archeology in Vermont (2002) that documents these activities. A copy of the report will be submitted to each of the parties.

The agreement proposes that these test pits be located in the vicinity of GMP pole numbers 57293, 57294, 70791 and 183915. Provided that the proposed mitigation to archaeological resources is implemented, we find that the proposed project will not result in an undue adverse impact to historic sites. We therefore condition issuance of the CPG upon completion of the archaeological study.

4. *In re: Petition of Vermont Electric Cooperative, Inc. for a Declaratory Ruling*, Docket No. 7201, Order of 9/15/06 at 2.

5. Letter from Giovanna Peebles, State Historic Preservation Officer, Division for Historic Preservation, Lieutenant Colonel Adam Rice, Base Civil Engineer, Vermont Air National Guard, and Don Lorraine, Commercial Account Manager, Green Mountain Power Corporation, to Susan Hudson, Clerk of the Board, dated September 26, 2011.

Necessary Wildlife Habitat
[10 V.S.A. § 6086(a)(8)(A)]

38. The proposed project will not destroy or significantly imperil necessary wildlife habitat or any endangered species. The U.S. Fish and Wildlife Service and Vermont Department of Fish and Wildlife have each determined that no threatened or endangered species are known to occur on VTANG base property. Wright pf. at 11.

Development Affecting Public Investments
[10 V.S.A. § 6086(a)(9)(K)]

Pursuant to Board Rule 5.107(B)(2), this criterion has been conditionally waived.

Public Health and Safety
[30 V.S.A. § 248(b)(5)]

39. The proposed project will not adversely impact public health and safety. The proposed project will comply with the National Electrical Code. Browning pf. at 4.

Discussion

As discussed above, under System Stability and Reliability, we are conditioning issuance of this CPG on VTANG implementing all of the recommendations of the SIS, including compliance with the National Electrical Code.

Least-Cost Integrated Resource Plan
[30 V.S.A. § 248(b)(6)]

Pursuant to 30 V.S.A. § 8007(b), this criterion has been conditionally waived.

Compliance with Electric Energy Plan
[30 V.S.A. § 248(b)(7)]

Pursuant to 30 V.S.A. § 8007(b), this criterion has been conditionally waived.

Outstanding Resource Waters
[30 V.S.A. § 248(b)(8)]

40. The proposed project is not located on or near any Outstanding Resource Waters as identified by the Vermont Water Resources Panel. Wright pf. at 13.

Existing or Planned Transmission Facilities
[30 V.S.A. § 248(b)(10)]

41. The proposed project can be served economically by existing distribution facilities without undue adverse effect on Vermont utilities or customers. The project will be interconnected to the existing GMP facilities on National Guard Road. The project will include all of the modifications identified in the SIS. All costs pertaining to the interconnection and system modifications and additions will be borne by VTANG. Browning pf. at 5.

IV. CONCLUSION

Based upon all of the above evidence, we conclude that the proposed project will be of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized by 30 V.S.A. §§ 219a, 248(j) and 8007(b); and the proposed project will promote the general good of the state.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board ("Board") of the State of Vermont that:

1. The proposed project of the Vermont Air National Guard ("VTANG") to construct and operate a 2.1 MW solar electric generation facility at the VTANG Base, located at the Burlington International Airport in South Burlington, Vermont, will promote the general good of the State of Vermont in accordance with 30 V.S.A. Section 248, and a certificate of public good to that effect shall be issued.

2. Construction, operation, and maintenance of the proposed project shall be in accordance with the plans and evidence as submitted in this proceeding. Any material deviation from these plans must be approved by the Board.

3. VTANG shall implement all recommendations of the system impact study related to the Green Mountain Power Corporation distribution system to ensure that system stability and reliability are not adversely impacted by the interconnection to the proposed project, and to ensure the public's health and safety.

4. VTANG shall work in coordination with Green Mountain Power Corporation and the Vermont Division for Historic Preservation to facilitate an archeological study by a qualified archeological consultant at pole locations 57293, 57294, 70791 and 183915, as more fully described in the September 26, 2011, agreement among the VTANG, Vermont Division for Historic Preservation, and Green Mountain Power Corporation. The study shall result in a report to the parties in conformance with the Division for Historic Preservation's Guidelines for Conducting Archeology in Vermont (2002).

Dated at Montpelier, Vermont, this 29th day of September, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: September 29, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psbclerk@.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.